

### **§ 18.83**

ten days after the conclusion of the conference. A copy of the prehearing order shall be mailed to all Parties.

(b) The prehearing order shall list: (1) All the issues which the hearing shall address, the order in which those issues shall be presented, and the direct testimony submitted which bears on the issues; and (2) a final date for submission of direct testimony on issues of fact not included in the notice of hearing if such issues are presented. The prehearing order may also specify a final date for submission of direct testimony to rebut testimony previously submitted during the time specified in the notice of the hearing.

(c) The presiding officer shall publish with the prehearing order a list of witnesses who may appear at the hearing, a list of parties, the nature of the interest of each party, and which parties interests are adverse on the issues presented.

(d) All parties shall be bound by the prehearing order.

### **§ 18.83 Determination to cancel the hearing.**

(a) If the presiding officer determines that no issues of material fact are presented by the direct testimony submitted prior to the date of the hearing, he may publish in the FEDERAL REGISTER such determination and that on issues of material fact a hearing shall not be held. The presiding officer may provide an opportunity for argument on any issues of law presented by the direct testimony.

(b) Promptly after oral argument, if any, the presiding officer shall make a recommended decision based on the record, which in this case shall consist of the direct testimony and any oral argument presented. He shall transmit to the Director his recommended decision, the record and a certificate stating that the record contains all the written direct testimony. The Director shall then make a final decision in accordance with these regulations (§18.91).

### **§ 18.84 Rebuttal testimony and new issues of fact in prehearing order.**

(a) Direct testimony to rebut testimony offered during the time period specified in the notice of hearing may

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be submitted pursuant to these regulations within fifteen days after the conclusion of the prehearing conference unless the presiding officer otherwise specifies in the prehearing order.

(b) If the prehearing order presents issues not included in the notice of the hearing published pursuant to §18.74:

(1) Any person interested in participating at the hearing on such issues presented shall notify the Director by certified mail of an intent to participate not later than ten days after publication of the prehearing order. Such person may present direct testimony or cross-examine witnesses only on such issues presented unless he previously notified the Director pursuant to §18.75; and

(2) Additional written direct testimony concerning such issues may be submitted within the time provided in the prehearing order. Such direct testimony will comply with the requirements of §18.77.

### **§ 18.85 Waiver of right to participate.**

Any person who fails to notify the Director of his intent to participate pursuant to §18.75 or §18.84 shall be deemed to have waived his right to participate as a party.

### **§ 18.86 Conduct of the hearing.**

(a) The hearing shall be held at the time and place fixed in the notice of hearing, unless the presiding officer changes the time or place. If a change occurs, the presiding officer shall publish the change in the FEDERAL REGISTER and shall expeditiously notify all parties by telephone or by mail. If the change in time or place of hearing is made less than five days before the date previously fixed for the hearing, the presiding officer shall also announce, or cause to be announced, the change at the time and place previously fixed for the hearing.

(b) The presiding officer shall, at the commencement of the hearing, introduce into the record the notice of hearing as published in the FEDERAL REGISTER, all subsequent notices published in the FEDERAL REGISTER, the Environmental Impact Statement if it is required and the comments thereon and agency responses to the comments, and a list of all parties. Direct testimony